

WC 394-07  
VAR

Venable, Dale

51829-6903

MS 9/9/07

MS 7/17/07

Martin O'Malley  
*Governor*

Anthony G. Brown  
*Lt. Governor*



Margaret G. McHale  
*Chair*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

September 4, 2007

Janet Davis, Critical Area Planner  
Development Review & Permitting  
One W Market Street, Room 1201  
Snow Hill, Maryland 21863

**RE: Tax Map 9, Parcel 328 (12507 Collins Road)  
Dale and Denise Venable**

Dear Ms. Davis:

Thank you for providing the revised plan for the above referenced variance. The site is an 110,663 square foot parcel located within the Resource Conservation Area (RCA) of the Atlantic Coastal Bays Critical Area. The property is currently developed with a house and paved driveway. There is a tributary stream on the property with a 100-foot Buffer as required by Worcester County Code §NR 3-104 and COMAR 27.01.09.01C.1. The applicant has requested a variance to allow new development within the Buffer. With the revised plan, the applicant proposes to build a new driveway and detached 1,040 square foot garage within the 100-foot Buffer. The revised proposal does not conform to the Critical Area law or the County's Critical Area Program because the County Code and COMAR prohibit new, non-water dependant development in the Buffer.

In 2002 and 2004, the Maryland General Assembly reiterated its commitment to the protection of the water quality and habitat of the Chesapeake and Atlantic Coastal Bays Critical Area by strengthening and clarifying the Critical Area law, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied the burden to prove that the request meets each one of the County's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term to mean that without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot. The variance to the 100-foot Buffer cannot be granted unless the applicant proves, and the hearing examiner finds, that without the variance, the applicant would suffer an unwarranted hardship, that is "denial of reasonable and significant use of the entire parcel or lot." We do not believe that this standard is met, and accordingly the variance should be denied. I have discussed each one of the County's variance standards below as it pertains to this site:

*1. Special conditions or circumstances exist that are peculiar to the applicant's land or structure and a literal enforcement of provisions and requirements of the County's Atlantic Coastal Bays Critical Area Program would result in unwarranted hardship;*

Currently, the lot is developed with a single family home, driveway, parking space, and deck that are partially within the 100-foot Buffer. As stated above, the General Assembly defined "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, he would be denied reasonable and significant use of **the entire parcel or lot**. The applicant has use of the deck, house, drive and parking already partially within the Buffer. Based on this information, we do not believe that the County has evidence on which to base a favorable finding on this factor for an additional large detached structure completely within the Buffer.

*2. A literal interpretation of the provisions of the County's Atlantic Coastal Bays Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Atlantic Coastal Bays Critical Area;*

The applicant has a reasonable use of this property for residential purposes including a deck, lawn yard area, house and driveway/parking that are all partially within the Buffer, and therefore, would not be denied a right commonly enjoyed by neighboring properties. From a review of the application we believe that there is opportunity to enjoy the property and construct a garage identical in size and accessibility to the proposed, in a manner that meets the Buffer regulations and remains consistent with the Worcester County Critical Area Regulations. Other property owners do not have a right to construct a new garage and paved driveway in the Buffer. Therefore, denial of a variance for the accessory structure (garage) and additional parking area would not deny the applicant a right commonly enjoyed.

*3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the County's Atlantic Coastal Bays Critical Area Program to other lands or structures within the Atlantic Coastal Bays Critical Area;*

If the variance is granted, it would confer upon the applicant a special privilege that would be denied to others in this area, as well as in similar situations in the County's Critical Area. To grant a variance to the Buffer beyond what has been established as law by the County would confer a special privilege on the applicant. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

*4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property;*

In contrast, the need for a variance to allow a large detached garage and additional paved parking area is directly the result of the applicant's proposal, for which there is a reasonable alternative location outside the Buffer.

*5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the County's Atlantic Coastal Bays Critical Area Program;*

In contrast, granting of this variance is not in harmony with the general spirit and intent of the Critical Area Program. The drainageway on the applicant's property has been recognized as a tributary stream by the County and is subject to the one-hundred-foot Buffer. This Buffer is required to be established from the edge of the bank of tributary streams by Worcester County Code §NR 3-104(a). New development and impervious surfaces in the Buffer, along with the associated disturbance to the land, results in lost habitat value and less biofiltration of stormwater by vegetation. New development activities, including new structures and impervious surfaces are not allowed in the Buffer, as stated in the Worcester County Code §NR 3-104(c). Given that the applicant can adequately enjoy outdoor activities without the addition of a garage and additional parking in the Buffer, approval of this variance would not be in harmony with the general intent and spirit of the Critical Area Law.

*6. In reviewing an application for a variance the Board of Zoning Appeals shall consider the reasonable use of the entire parcel or lot for which the variance is requested.*

Considering the reasonable use of the entire property requires recognition of the fact that the site has adequate space outside of the Buffer to construct a garage and driveway of the same size and accessibility, such as over the existing paved driveway/parking area or over the lawn in the northeast corner of the property.

*7. The Board of Zoning Appeals shall not make a decision relative to a request for such a variance without reviewing the comments of the Department and finding that the applicant has satisfied each of the provisions and standards contained herein*

In conclusion, it is our position that, unless the Board finds, by competent and substantial evidence, that the applicant has met the burden of proof to overcome the presumption of non-conformance, and the burden to prove that the applicant has met each one of the County's variance standards, the Board must deny the application for variance to the Buffer.

Thank you for the opportunity to provide comments on this variance request. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at 410-260-3479.

Sincerely,



Marshall Johnson  
Natural Resources Planner

cc: WC 394-07

Martin O'Malley  
*Governor*

Anthony G. Brown  
*Lt. Governor*



Margaret G. McHale  
*Chair*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
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July 17, 2007

Janet Davis, Critical Area Planner  
Development Review & Permitting  
One W Market Street, Room 1201  
Snow Hill, Maryland 21863

**RE: Tax Map 9, Parcel 328 (12507 Collins Road)  
Dale and Denise Venable**

Dear Ms. Davis:

Thank you for providing information on the above referenced variance. The site is a 110,663 square foot parcel located within the Resource Conservation Area (RCA) of the Atlantic Coastal Bays Critical Area. The property is currently developed with a house and driveway. There is a tributary stream on the property with a 100-foot Buffer as required by Worcester County Code §NR 3-104(c)(1) and COMAR 27.01.09.01C.1. The applicant has proposed to build a new driveway and detached 1,040 square foot garage within the 100-foot Buffer. The proposal does not conform to the Critical Area law or the County's Critical Area Program, because the County Code and COMAR prohibit new, non-water dependant development in the Buffer. The applicant has requested a variance to allow the driveway and garage in the Buffer.

In 2002 and 2004, the Maryland General Assembly reiterated its commitment to the protection of the water quality and habitat of the Chesapeake and Atlantic Coastal Bays Critical Area by strengthening and clarifying the Critical Area law, especially emphasizing the importance of the 100-foot Critical Area Buffer. In particular, the General Assembly stated that variances to a local jurisdiction's Critical Area program may be granted only if a zoning board finds that an applicant has satisfied the burden to prove that the request meets each one of the County's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term to mean that without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot. The site appears to have adequate space outside of the Buffer to construct a garage and driveway of the same size and accessibility. The applicant is not denied reasonable and

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450

Ms. Janet Davis  
July 17, 2007  
Page 2 of 2

significant use of the entire property without the variance. Based on the information provided, this office would not support this variance request.

Thank you for the opportunity to provide comments on this variance request. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any additional questions please contact me at 410-260-3479.

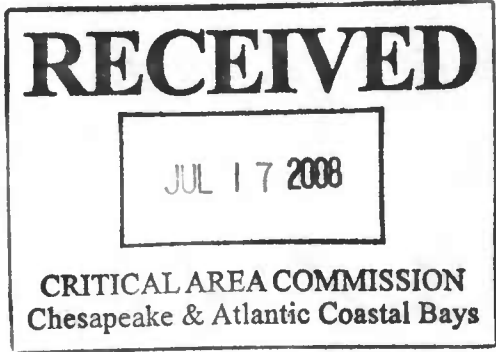
Sincerely,



Marshall Johnson  
Natural Resources Planner

cc: WC 394-07

WC 220-08  
WC 221-08  
WC 394-07



IN THE MATTER OF \*  
HUGH CROPPER, IV, ESQ. \*  
ON THE LANDS OF \*  
DALE VENABLE and \*  
DENISE VENABLE \*  
BEFORE THE BOARD OF ZONING \*  
APPEALS FOR WORCESTER COUNTY, \*  
MARYLAND \*

CASE NO.: 111962

OPINION

A hearing was held before the Board of Zoning Appeals for Worcester County, Maryland, on Thursday, June 12, 2008, upon the application of Hugh Cropper, IV, Esquire, on the land of Dale Venable and Denise Venable, requesting a variance to reduce the one hundred (100) foot Atlantic Coastal Bays Critical Area Buffer, measured from a blue line stream, to 60.6 feet (a reduction of 39.4 feet), associated with a proposed detached garage in conjunction with an existing single family dwelling, in an E-1 Estate District, A-1 Agricultural District setbacks apply, classified as Resource Conservation Area (RCA) in the Atlantic Coastal Bays Critical Area, pursuant to Zoning Code Sections ZS 1-116(m), ZS 1-125, ZS 1-201 (b)(2) and ZS 1-201(d)(2) and Natural Resources Article Sections NR 3-104(c)(4) and NR 3-111. The property is located at 12507 Collins Road, approximately 2,500 feet south of the intersection of Jarvis Road and Collins Road, "Parcel A Revised and Resubdivision Plat of James R. Farlow and Denise R. Farlow", Tax Map 9, Parcel 328, in the Fifth Tax District of Worcester County, Maryland.

Kelly Henry, Zoning Administrator, presented the application to the Board.

Denise Venable, Dale Venable, Spencer Rowe, and Layton Bunting, Jr., a land surveyor, testified in favor of the application. Offered as an Exhibit was a copy of the transcript of the testimony presented at the original hearing on this request and given BZA Case Number 107327. Included in the record, and considered by the Board, was the letter from Marshall Johnson, Natural Resources Planner for the State of Maryland Critical Area Commission Chesapeake and Atlantic Coastal Bays, to Janet Davis, dated May 17, 2008.

Mrs. Venable testified that the subdivision was created on November 21<sup>st</sup>, 1989, which predated the effect of the Critical Area Law. The house on the property was built in 1986, prior to the enactment of the Critical Area Law. She explained that the property contains a blue line stream that essentially divides the property in half, so that almost one-half of the property, even though it is upland in the rear of the property, is not accessible because of the blue line stream.

Mrs. Venable testified that the property has a large septic reserve area that existed prior to the enactment of the critical area law, and that the County's Department of Environmental Programs has explained to her that she cannot build on that area. The area of the proposed garage is currently a grassy area that contains a dog pen, which has a concrete pad. The dog pen, which was built at the same time as the house, extends further into the critical area buffer than the proposed garage would if the variance is approved. The dog pen would be removed if the application is granted.

Mrs. Venable also testified that the proposed location of the garage is the most appropriate place on the property to locate it. This is because any other location is restricted by the blue line stream. The septic reserve area exists with mature trees in the front yard setback. She explained that if the garage is located further away from the house, the driveway would have to be extended, which would result in the creation of more impervious surface.

She testified that if the application is denied, she will be deprived of rights commonly



enjoyed by other properties in the neighborhood. She explained that she wants to construct a two-car garage with a small storage area on the property to store vehicles, her husband's motorcycle, and the lawn equipment necessary to maintain the yard, and that the proposed garage is smaller than some of the other detached garages in the area.

Mrs. Venable testified that the property is in an E-1 Zoning District, that is agricultural in nature, because that is what it was when it was subdivided. She stated that the whole area is a more agricultural type area in nature than it is an urban type area in nature. She explained that other properties in the neighborhood typically enjoy detached garages.

Mr. Bunting, a licensed surveyor in the State of Maryland, corroborated the testimony given by Mrs. Venable. He further testified that due to the unique nature of the lot, he revised the plat eight (8) times attempting to locate the garage in the proper spot in the yard. He testified that the proposed location of the garage is the best location for the garage, that the neighborhood is an agricultural type neighborhood, and that people in the subject neighborhood enjoy barns, outbuilding, accessory structures, sheds, and the like. He also testified that from an environmental point of view, it is better to locate the garage where proposed rather than trying to cut existing trees or utilizing the uplands in the rear of the property past the blue line stream. He explained that he and the Mrs. Venable tried placing the garage further towards the front of the lot, but, because of the existing septic system and the setback from the septic system, it would be very difficult to access the garage and would create much more impervious surface than they are actually trying to utilize. He testified that if the application is approved, the Applicant will have to do mitigation by installing planting where there is currently lawn. The addition to those plantings will actually improve the environment.

Mr. Rowe, an environmental consultant, corroborated the testimony of Mrs. Venable and Mr. Bunting. He further testified that he is certified to delineate wetlands, and that he has delineated

more than a thousand wetlands. As part of his practice, he designs and builds wetlands, both tidal and non-tidal wetlands, and he is considered a qualified professional under the County's Forest Conservation Act. Mr. Rowe testified that Kathy Phillips, the Coast Keeper, has indicated that she supports the Application before the Board. He testified that, in his opinion, the granting of a variance will not adversely affect water quality or adversely affect fish wildlife or plant habitat. He testified that the combination of removing the dog pen, implementing the storm water management plan prepared by Mr. Bunting, and planting trees to satisfy the mitigation requirements will work to improve the environment over the current conditions on the lot. A summary of Mr. Rowe's testimony and opinions was offered into the record as an Exhibit.

In light of the testimony and other evidence presented, the Board considered the evidence in relation to the standards that need to be met to grant the variance. With regard thereto, the Board found the following:

- 1) Special conditions or circumstances exist that are peculiar to the applicant's land or structure and a literal enforcement of provisions and requirements of the County's Atlantic Coastal Bays Critical Area Program would result in unwarranted hardship.

The record indicates that this parcel existed, and was improved by, a single family dwelling and driveway prior to the adoption of the Ordinance. There is a designated blue line stream which runs through the middle of this parcel, upon which the 100 foot buffer is established. Due to the location of this designated stream, the Applicants cannot effectively access the rear one-half of their property. The existing drainfield area and platted septic reserve area are located in the front of this parcel and consumes a large portion of the building envelope outside of the critical area buffer. The property is also improved with several mature trees along the road frontage and directly in front of the home. It is the owners desire not to clear any of the existing vegetation. The enforcement of the Ordinance would deny the Applicants of a significant use of the parcel. For these reasons, the Board

finds that special conditions or circumstances exist that are peculiar to the Applicants' land or structure and a literal enforcement of provisions and requirements of the County's Atlantic Coastal Bays Critical Area Program would result in unwarranted hardship.

2) A literal interpretation of the provisions of the County's Atlantic Coastal Bays Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Atlantic Coastal Bays Critical Area.

The record reveals that the property is currently improved with a single family dwelling. This request is for an accessory garage. The surrounding neighborhood is primarily agricultural in nature, which is conducive to property owners enjoying accessory structures such as detached garages for additional storage capacity. Other properties in the area enjoy detached garages to store vehicles and the lawn equipment necessary to maintain the property. The proposed detached garage will allow the property owners to enjoy their property, and that the garage planned is smaller than some of the other detached garages in the area. For these reasons, the Board finds that a literal interpretation of the provisions of the County's Atlantic Coastal Bays Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Atlantic Coastal Bays Critical Area.

3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the County's Atlantic Coastal Bays Critical Area Program to other lands or structures within the Atlantic Coastal Bays Critical Area.

The Application before the Board is for the construction of an accessory garage to an existing single family dwelling on an existing parcel which predates the Critical Area Law. There is no clearing necessary for the proposed garage. The record indicates that the Applicants' proposal meets all other Critical Area Law requirements with the exception of the 100 foot buffer variance request. The property is 110,633 square feet and is allowed to have 15% of the site (16,595 sq. ft.) in developed impervious surface. The proposed site plan has only 7.13% impervious surface coverage,

which is less than one half of the limits allowed by the Critical Area Law. Therefore, the Board finds that the granting of requested variance will not confer upon the Applicants any special privilege that would be denied by the County's Atlantic Coastal Bays Critical Area Program to other lands or structures within the Atlantic Coastal Bays Critical Area.

4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property.

This is not an after-the-fact request. If the variance is approved, the property's use or zoning classification will not change. The Board notes that the Applicants could have requested a variance to encroach into the buffer and cross the blue line stream to access the rear portion of their property for additional improvements. However, the Board also notes that the rear portion of the property is densely wooded, and the Applicants' desire to not clear the area of trees is reasonable. Therefore, the Board finds that the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property.

5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the County's Atlantic Coastal Bays Critical program.

The Board notes that if the variance is approved, Section NR3-111(e)(1) of the County Code requires a planting agreement to be implemented to mitigate any disturbance within the Buffer. The mitigation required would be triple the square footage of the limits of disturbance within the buffer. The owners propose to plant the mitigation requirement in the area between the proposed garage and the existing woods line, which would enhance the buffer off the stream. The owners have also voluntarily elected to implement a storm water management plan for this project even though one

is not required under the circumstances. Implementing both the mitigation requirement and the storm water management plan will have a positive impact on water quality. Therefore, the Board finds that the granting of the requested variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the County's Atlantic Coastal Bays Critical program.

6) The Board of Zoning Appeals shall not make a decision relative to a request for such a variance without reviewing the comments of the Department and finding that the applicant has satisfied each of the provisions and standards contained herein.

In rendering its decision, the Board considered the application (including all attachments thereto and the various County staff reports) the testimony presented at the hearing, and the comments issued by the State of Maryland Critical Area Commission Chesapeake and Atlantic Coastal Bays to determine whether the standards set forth herein had been met prior to rendering a decision for this variance request.

After duly considering the application, and the testimony and other evidence offered and presented in connection therewith, the Board concluded that the Applicant had met the burden of proof imposed upon him by Sections ZS 1-116(m), ZS 1-125, ZS 1-201 (b)(2) and ZS 1-201(d)(2) and Natural Resources Article Sections NR 3-104(c)(4) and NR 3-111. Accordingly, upon a Motion made by Ms. Gismondi, which was seconded by Mr. Taylor, the Board unanimously passed the following resolution:

BE IT RESOLVED, that the requested variance be GRANTED, with the conditions that 1) the storm water management plan prepared by the Applicants be implemented, and 2) that the mitigation will all be in the area of the garage and swale.

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Date

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Date

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Date

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Date

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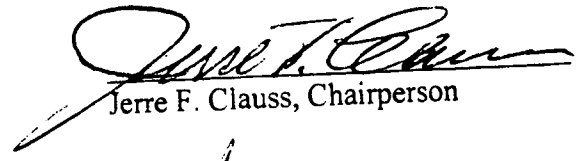
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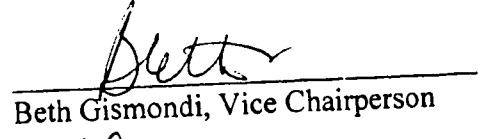
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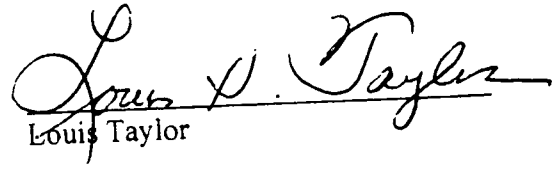
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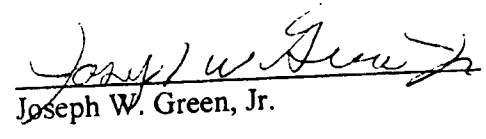
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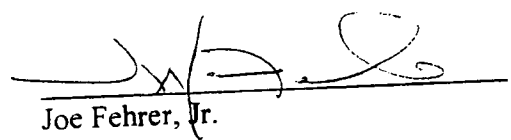
  
Jerre F. Clauss, Chairperson

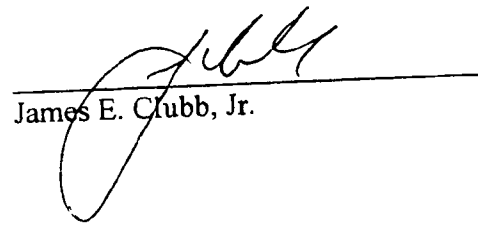
  
Beth Gismondi, Vice Chairperson

  
Louis Taylor

  
Joseph W. Green, Jr.

  
Rodney C. Belmont

  
Joe Fehrer, Jr.

  
James E. Clubb, Jr.

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PAGE 03/05

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IN THE MATTER OF \*  
 DENISE VENABLE \* CASE NO.: 107327  
 BEFORE THE BOARD OF ZONING \*  
 APPEALS FOR WORCESTER COUNTY, \*  
MARYLAND \*

#### OPINION

A hearing was held before the Board of Zoning Appeals for Worcester County, Maryland, on Thursday, October 11, 2007, upon the application of Denise Venable, requesting a variance to reduce the one hundred foot (100.0) Atlantic Coastal Bays Critical Area Buffer, from a blue line stream, to 57.6 (a reduction of 42.4 feet), associated with a proposed detached garage in conjunction with an existing single family dwelling, in an E-1 Estate District, A-1 Agricultural District setbacks apply, pursuant to Sections ZS 1-116(m)(1), ZS 1-125, ZS 1-201(b)(2), ZS 1-201(d)(2), NR 3-104(c)(4), and NR 3-111, located at 12507 Collins Road, approximately 2,500 feet south of the intersection of Jarvis Road and Collins Road, "Parcel A Revised and Resubdivision Plat of James R. Farlow and Denise R. Farlow", Tax Map 9, Parcel 328, in the Fifth Tax District of Worcester County, Maryland.

Kelly Henry, Zoning Administrator, presented the application to the Board.

The Applicant, Denise Venable, and Spencer Rowe testified before the Board. There were no protestants to the application, though the Board did take into consideration the letter of Marshall Johnson, Natural Resources Planner for the state of Maryland, under date of July 17<sup>th</sup>, 2007. Mrs. Venable testified that she is seeking a variance to reduce the one hundred foot (100') Atlantic Coastal Bays Critical Area Buffer so that she may install a 2 car garage on the property. As proposed, the garage will be placed in the same area currently occupied by a dog pen with a concrete floor that

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would be removed from the property. Mrs. Venable testified that no large trees on the property will be removed due to the construction of the garage. She also testified that this is the only reasonable location for the driveway. While it may be possible to build a garage outside the buffer area, doing so would cause the Applicant to make a driveway that extends over the buffer area and cross over a ditch on the property, neither of which is permitted by law or advisable. The Applicant further testified that the dog pen on the property extends into the buffer area further than the proposed detached garage will extend. The Applicant professed to the Board that if the variance was granted, she would include a storm water management agreement and incorporate into her planning the recommendations made by the Worcester County staff. The Board accepted the Applicant's proffer in rendering its decision.

After duly considering the application, and the testimony and other evidence offered and presented in connection therewith, the Board concluded that the Applicant had met the burden of proof imposed upon her by Sections ZS 1-116(m)(1), ZS 1-125, ZS 1-201(b)(2), ZS 1-201(d)(2), NR 3-104(c)(4), and NR 3-111. Accordingly, upon a Motion made by Mr. Taylor, which was seconded by Mr. Fehrer, the Board unanimously passed the following resolution:

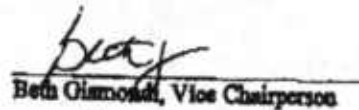
BE IT RESOLVED, that the requested variance be GRANTED.

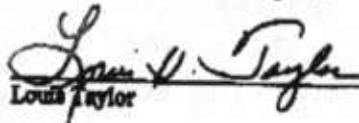
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Jerro F. Claus, Chairperson

  
Beth Oismond, Vice Chairperson

  
Louis Taylor



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WOR CO HEALTH HR

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Date

Joseph W. Green, Jr.  
Joseph W. Green, Jr.

11.08.07  
Date

Rodney C. Belmont  
Rodney C. Belmont

11-8-07  
Date

Joe Feltz, Jr.  
Joe Feltz, Jr.

            
Date

\* ABSENT \*  
James E. Clubb, Jr.

1 Worcester County Board  
2 Of Zoning Appeals, held  
3 October 11, 2007 in the  
4 County Government Center  
5 Snow Hill, Maryland.

\* Members present:  
\* Jerre Clauss,  
\* Chairman; Beth  
\* Gismondi; Lou Taylor;  
\* Joseph Green, Rodney  
\* Belmont, and Joe  
\* Fehrer.

6  
7  
8 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

9 IN RE: BZA CASE NO. 107327  
10 In the matter of Denise Venable.

11 PRESENT:

12 On behalf of the Board of Zoning Appeals:

13 CHRISTOPHER WOODLEY, ESQUIRE

14 On behalf of the Applicant:

15 HUGH CROPPER, IV, ESQUIRE

16 Also Present:

17 Kelly Henry, Zoning Administrator

18 Chris McCabe, Natural Resources Administrator

19 Bonnie Merritt, Development, Review &  
20 Permitting Specialist I

21 John Azzolini, Development, Review &  
Permitting Specialist I

22 Stenographically Reported By:

Melinda J. Cody

## P R O C E E D I N G S

CHAIRMAN CLAUSS: Call the next case, please.

MS. HENRY: Case No. 107327, on the application of Denise Venable.

CHAIRMAN CLAUSS: All concerned please step forward and be sworn in.

(Whereupon, the applicant was duly sworn.)

MS. VENABLE: Denise Venable, 12507 Collins Road, Bishopville, Maryland.

CHAIRMAN CLAUSS: Please read Case No. 107327.

MS. HENRY: Requesting a variance to reduce the one hundred foot Atlantic Coastal Bays Critical Area Buffer, from a blue line stream, to 57.6 feet (a reduction of 42.4 feet), associated with a proposed detached garage in conjunction with an existing single family dwelling, in an E-1 Estate District, A-1 Agricultural District setbacks apply, pursuant to Sections ZS 1-116(m)(1), ZS 1-125, ZS 1-201(b)(2), ZS 1-201(d)(2), NR 3-104(c)(4), and NR 3-111, located at 12507 Collins Road, approximately 2,500 feet south of

1 the intersection of Jarvis Road and Collins Road,  
2 "Parcel A Revised and Resubdivision Plat of James R.  
3 Farlow and Denise R. Farlow", Tax Map 9, Parcel 328, in  
4 the Fifth Tax District of Worcester County, Maryland.

5 CHAIRMAN CLAUSS: Any additions or  
6 corrections?

7 MR. CROPPER: No, sir.

8 CHAIRMAN CLAUSS: Please tell us why you're  
9 here.

10 MR. CROPPER: Thank you. For the record, my  
11 name is Hugh Cropper, I represent the Applicant. This  
12 is a variance to the 100 foot buffer as you know, to  
13 authorize construction of a 26 by 40 detached garage in  
14 the 100 foot buffer which exists by virtue of this blue  
15 line stream. Just a little preface, you should know  
16 that the area is open and grassy, this does not involve  
17 any clearing and it's in the area of an existing dog pen  
18 which we propose to remove. I'm going to go through the  
19 criteria with Mrs. Venable who's here.

20 Now, Denise, this lot was platted long before  
21 the Critical Area Law; isn't that right?

1 A. Yes.

2 Q. Okay. And the lot for the record is  
3 2.54 acres?

4 A. Yes.

5 Q. And approximately how long has the house been  
6 there?

7 A. Since 1986, I mean an addition was put on in  
8 2002.

9 Q. Okay. And you've lived there the whole time?

10 A. Yes.

11 Q. And the driveway and the septic and  
12 everything, that has all existed for the past 20 years?

13 A. Yes.

14 Q. Now, what Mr. Bunting on his survey shows as  
15 a ditch, it's your understanding that that's actually a  
16 blue line stream as shown on the critical area map; is  
17 that right?

18 A. Yes.

19 Q. Okay. Do you have any pictures of that, of  
20 what the stream looks like?

21 A. The actual stream?

1 Q. Yes.

2 A. That's going north, that's more going north.

3 Q. We'll mark these Exhibits 1, 2, and 3 when  
4 they get to Mr. Woodley, but we'll just go ahead and  
5 send them around for now. And this summer because of  
6 the dry conditions it was essentially dry most of the  
7 summer?

8 A. It's been dry since March, April, it pretty  
9 much stays dry.

10 Q. Okay. And you have a picture that shows the  
11 grassy area where you want to put your garage?

12 A. Here.

13 Q. Perfect. Okay. So this -- we'll mark this  
14 as No. 4, this is the dog pen that you want to -- and  
15 there's one with the dog -- these two pictures that  
16 we'll mark as 4 and 5, this is the dog pen that you  
17 propose --

18 A. Yes.

19 Q. -- to remove?

20 A. Yes.

21 Q. But again, the garage will be what's your

1 lawn right now?

2 A. Yes.

3 Q. You don't have to cut any trees?

4 A. No.

5 Q. We'll mark these as 4 and 5. And

6 Mr. Bunting's plat that shows the tree line, that's  
7 actually the outside canopy of the tree, the actual  
8 stumps of the trees are back a little further than that;  
9 is that right?

10 A. Yes, that's the actual drip line you were  
11 calling it.

12 Q. Okay. Now, to describe for the record so  
13 that it's clear for the record, you currently have a  
14 house with a garage with an existing driveway and a  
15 platted septic reserve area?

16 A. Correct.

17 Q. Okay. And you have several large trees on  
18 your property currently which have been there for quite  
19 some time and you want to keep?

20 A. Yes, they've been there longer than the  
21 house.

1 Q. Okay. So it's really not an option, you  
2 don't want to cut down some of those mature trees in  
3 order to build your garage?

4 A. No.

5 Q. Okay. So is it fair to say that you -- that  
6 this is really in your opinion the only reasonable  
7 location to put this garage?

8 A. Yes, it's where I had planned in the future  
9 to build a garage not being aware of all of this, but I  
10 had actually planted crepe myrtles so they would kind of  
11 be in between it.

12 Q. And you would agree that the reserve area,  
13 the mature trees, and the hundred foot buffer greatly  
14 restrict the building envelope where you can put this  
15 garage?

16 A. Absolutely.

17 Q. Now, this is sort of residential, sort of  
18 agricultural community? That is if I drive to your  
19 house we see a lot of accessory structures, storage  
20 buildings, and that sort of thing?

21 A. Uh-huh.



1 Q. Okay. So it's not unusual for anybody in  
2 this neighborhood to have a detached garage or storage  
3 building or that sort of thing?

4 A. No.

5 Q. I just point out for the record that you're  
6 allowed to clear up to 15 percent and with the proposed  
7 site plan you have a little over seven percent  
8 impervious surface, so you're well within the impervious  
9 surface.

10 A. Okay.

11 Q. And it's your understanding you comply in  
12 every other respect with the Critical Area Law?

13 A. Yes.

14 Q. And obviously this isn't an after-the-fact  
15 variance, this is something that you've come to the  
16 staff and asked them about?

17 A. We've been working on it since last April.

18 Q. Okay. To get your permit, and you've  
19 actually sent Mr. Bunting out there and revised your  
20 site plan a couple of times?

21 A. Yes. And I've worked with Janet and moved it

1 again to try and get over the 50-foot mark that we're up  
2 to, the 58 feet.

3 Q. Yeah, 57.6?

4 A. Yes.

5 Q. And you understand that if the variance is  
6 granted that you will have to do mitigation essentially  
7 on a 3 to 1 basis?

8 A. Of planting trees.

9 Q. Right, and you're willing to put supplemental  
10 planting between the back of the garage and the existing  
11 woods line which would actually increase the buffer from  
12 what exists right now?

13 A. Yes, absolutely.

14 Q. Now, one thing that the staff talks about  
15 here is a storm water management plan. We met earlier  
16 with Mr. Woody Bunting who did your survey and even  
17 though you're under 5,000 square feet and would be  
18 exempt from getting a storm water management approval  
19 you would be willing to make a condition of approval  
20 that you would get the storm water management approval  
21 for this?

1 A. Yes.

2 Q. So you'd hire a surveyor or whoever would be  
3 required to do a storm water management plan, that would  
4 be a condition of approval?

5 A. Yes.

6 Q. And again, for the record, this isn't a  
7 condition -- this is not an after-the-fact variance,  
8 you've not constructed any of this?

9 A. No, absolutely not.

10 Q. Okay. And you've worked every way you can,  
11 and you've got electrical transformers, you've got an  
12 existing deck, you've got a well, you've got mature  
13 trees, your existing drain fields, you've got a platted  
14 reserve areas, you've got side yard setbacks all of  
15 which really leave this as the most logical place to put  
16 your detached garage?

17 A. Correct.

18 Q. Okay. Now, the -- you have  
19 substantial -- your property is a triangle, in the rear  
20 of the triangle you actually have substantial upland in  
21 the rear?

1 A. Uh-huh.

2 Q. That's usable for some purpose presumably?

3 A. Yes.

4 Q. And your lot is bisected by the blue line  
5 stream, so to get to the rear of your property I want to  
6 state this clearly, you could put the garage in the rear  
7 of your property and be outside the buffer, but you  
8 would have to have a road through the buffer and cross  
9 the blue line stream to get to it?

10 A. Yes, sir.

11 Q. So in your current proposal you're not going  
12 to remove any trees, in fact, you're going to plant a  
13 lot of trees. If you put the garage outside the buffer  
14 and in the rear of the property you'd have to clear a  
15 road and make a bridge across the ditch?

16 A. Right.

17 Q. Okay. And that's something you've discussed  
18 with the staff as well and the staff felt that putting  
19 the garage in the front would be better than --

20 A. It would have the least environmental impact.

21 Q. Right, because you wouldn't be across the

1 ditch, you'd actually be -- you would actually be --  
2 although the code requires 100 feet, you would actually  
3 in practicality be increasing the buffer that's there  
4 now by planting more trees?

5 A. Right.

6 Q. Okay. And we've had the discussion of trying  
7 to move the garage further to the front, but in the  
8 front you're also constrained by your existing drain  
9 field and your front yard setback?

10 A. Right.

11 Q. And you've been told by the environmental  
12 program folks this piece on the right is actually the  
13 installed drain field and you have to be -- they want  
14 you to be a certain distance away from that drain field  
15 as it's installed?

16 A. Correct.

17 Q. Okay. So --

18 A. I can't drive across it.

19 Q. Right, and you can't drive across it to get  
20 to your garage?

21 A. Right.

1 Q. And the dog pen is impervious surface, it  
2 would be removed?

3 A. Right.

4 Q. And it currently extends further into the  
5 buffer than the proposal that you have now?

6 A. The dog pen was built when the house was  
7 built.

8 Q. I would point out that the local staff  
9 comments I think are favorable in every respect. I  
10 think the local staff comments say that the Applicant  
11 has met the burden of proof in each instance, they do in  
12 consideration of the State's comments, they said that we  
13 could either downsize the accessory structure or  
14 incorporate a storm water management plan and the  
15 applicant is voluntarily proposing to do that. I would  
16 point out that as it relates to Mr. Marshall Johnson's  
17 comments, as this Board knows I dispute what he says  
18 sometimes, particularly in this case I find it unique  
19 that Mr. Johnson comes out against -- is against us on  
20 every single point, he says we don't meet any of the  
21 criteria, even the criteria that talks about whether or

1 not it's an after-the-fact variance because we don't  
2 even meet that criteria. So I don't know why he says  
3 that, but that's what your -- you've got your local  
4 staff that's worked with the Applicant, has been out to  
5 the property, looked at it, they give you a favorable  
6 recommendation on every single point, probably the most  
7 favorable -- this is probably the most favorable staff  
8 report that I've seen on a Critical Area variance yet.  
9 Mr. Johnson -- Mr. Marshall Johnson who's never been to  
10 this property has given you unfavorable on every point.

11 That would really be our case. It is -- I  
12 think it's a perfect Critical Area variance situation  
13 and it certainly is a net environmental benefit because  
14 you're making a buffer bigger, you're making a bigger  
15 wooded buffer.

16 That would be our case.

17 CHAIRMAN CLAUSS: Board, questions?

18 Mr. Fehrer?

19 MR. FEHRER: Yes. Mr. Cropper, for the sake  
20 of the Board, would you define a blue line stream,  
21 please?

1 MR. CROPPER: To me a blue line stream --

2 MR. FEHRER: We hear this term a lot, just  
3 for the sake of the Board.

4 MR. CROPPER: I don't know, to me, a blue  
5 line stream is, you know, an estuarine stream that's  
6 designated as such on a map. Quite frankly, I've walked  
7 across this ditch a bunch of times and to me it's not a  
8 blue line stream because it doesn't really have any  
9 connection to the river.

10 MR. FEHRER: And well, not specifically this  
11 case and I may defer --

12 MR. ROWE: Well, I think I can answer that.  
13 Blue line comes from the USGS quad maps --

14 MS. GISMONDI: Why don't we let Chris answer  
15 that.

16 MS. HENRY: Mr. Rowe will tell you, but the  
17 blue line stream as defined in the Critical Area Law is  
18 the dashed lines. A blue line stream on the USGS code  
19 map is how it's defined. Actually we looked at -- when  
20 it was geometrically put onto the critical area map it  
21 was pulled off of the USGS which is what the federal



1 government uses. So that's what we define it, it's  
2 shown as a blue line stream and we have to apply it as a  
3 blue line stream unless otherwise disputed and the Corp  
4 -- if you dispute it, the Corps comes out and looks at  
5 it and says, no, we don't think it's a blue line stream.

6 MS. GISMONDI: But it's been on the maps for  
7 years and years and years.

8 MR. FEHRER: It's delineated.

9 MR. ROWE: And sometimes there's some that  
10 run right through the center of Lincoln Harbor, maps are  
11 generated.

12 CHAIRMAN CLAUSS: Yeah, if you're going to  
13 start to testify we're going to have to swear you in.

14 MR. ROWE: I'm done.

15 MR. FEHRER: No, I just wanted -- this term  
16 comes up before the Board and I wanted for the Board's  
17 sake to have a definition of blue line, where they came  
18 from. So thank you.

19 Is there any -- in looking at the plat, is  
20 there any way that that garage could be moved slightly  
21 towards the -- it would still be within the 100 foot

1 critical area, part of it, but could it be swung and  
2 moved around towards the existing drain fields slightly,  
3 is that a possibility?

4 MS. GISMONDI: You said there was a setback  
5 requirement, what is that?

6 MS. VENABLE: Eight feet or ten feet. The  
7 question before the Board was where the actual drain  
8 field ends.

9 MS. GISMONDI: Well, Mr. Bunting platted it  
10 for you, so I'm assuming he's accurate, but it's right  
11 there.

12 MR. FEHRER: Do you understand what I'm --

13 MR. CROPPER: I understand clearly and I  
14 think what Denise is saying, Mr. Bunting probably took  
15 his existing drain field area off the permit back when  
16 it was installed in 1987 or 1988, the actual site might  
17 not be in the location of this and there's a 10-foot --  
18 they want to keep a 10-foot setoff, I understand what  
19 Mr. Fehrer's saying. You know, it's a reasonable use of  
20 the property, you know, they want it close to the house,  
21 they don't want their driveway to be bigger, that's

1 where they wanted to put it, that's where the dog pen  
2 is, you know, they want to keep it together rather than  
3 sprawling all over the lot. If you put it down here  
4 it's really in the front yard, if you come up Collins  
5 Road it looks like it's sitting in their -- it looks  
6 like their mailbox is going to be this.

7 MS. VENABLE: We looked at turning it this  
8 way.

9 MR. FEHRER: That's exactly what I was --

10 MS. VENABLE: And it was still taking up just  
11 as much in the way Ms. Davis had figured it didn't --

12 MR. FEHRER: It's still hinged to the --

13 MS. VENABLE: Right, this way all I see -- I  
14 can still see out my bay window and still see my  
15 daughter playing in the yard.

16 MS. GISMONDI: I didn't get that, why can't  
17 you locate it around and bring it up and put it right up  
18 on the existing driveway or part of it?

19 MS. VENABLE: If we turn this little piece  
20 this way --

21 MS. GISMONDI: Why can't we have a garage

1 here?

2 MS. VENABLE: You can't here because of the  
3 -- well, because this is the reserve spot which we had  
4 to stay away from first of all.

5 MS. GISMONDI: Bring it up eight, you can  
6 pull it in and park that way.

7 MR. CROPPER: Right, you're not really to  
8 scale, that's right.

9 MS. GISMONDI: I'm just taking this right  
10 here.

11 MR. CROPPER: You've got to be able to turn  
12 and get into your garage and then it comes back here.

13 MS. GISMONDI: And then come here and get in  
14 that parking space.

15 MR. CROPPER: When we talked to Janet and we  
16 actually sat it like that the intrusion into the buffer  
17 was about the same as what we have now.

18 MS. GISMONDI: It looks like we can go back  
19 this way.

20 MS. VENABLE: And then we ran into this  
21 problem, number one.

1 MS. GISMONDI: How come you can't move all of  
2 this up and put it right on the line?

3 MR. CROPPER: Because you've got to get into  
4 it.

5 MS. GISMONDI: Well, she would be, that's all  
6 the driveway.

7 CHAIRMAN CLAUSS: Because you pull into that  
8 spot now.

9 MR. CROPPER: Well, she's got a garage door  
10 here to her house.

11 MS. VENABLE: This is my garage.

12 MS. GISMONDI: Right, this is how you get in.  
13 And why are we putting another garage on this, what was  
14 the purpose of building a new one?

15 MR. CROPPER: She needs another garage.

16 MS. VENABLE: Because this is only a single  
17 car garage.

18 MS. GISMONDI: Do you have some --

19 MS. VENABLE: No, I'm married.

20 MS. GISMONDI: I didn't know, what's the  
21 purpose, is this a two car garage, a three car garage?

1 MS. VENABLE: Two, my husband has a  
2 motorcycle and we both have vehicles.

3 MS. GISMONDI: And nowadays it's the  
4 motorcycle and your car in the garage and then one sits  
5 out? That's the purpose of building?

6 MR. TAYLOR: I don't think it has any bearing  
7 on what they use it for.

8 MS. GISMONDI: I was just thinking if she was  
9 just a car collector there could be other garages out.

10 MR. CROPPER: I think the answer to that,  
11 Beth, is if you ride through this community it is a  
12 predominately mixture of residential and agricultural  
13 and that's what your staff said and I see a lot of  
14 detached buildings out there that are a lot bigger than  
15 this, old sheds, storage buildings --

16 MS. GISMONDI: I used to live out there.

17 MR. CROPPER: -- and that sort of thing. And  
18 when you live out in the country on two and a half  
19 acres, you have riding lawn mowers and you have all of  
20 that, you have all of that stuff that goes --

21 MS. VENABLE: The drawings that we have

1 worked on for the garage being that size also gives me  
2 room to put two dormers to make it look just like the  
3 house basically, not that it looks just like the house  
4 because it's not the same size, but to make it uniform  
5 with what's already there.

6 MS. GISMONDI: Do you have the drawing that  
7 shows that? I keep thinking you've got the driveway  
8 that you can get into those.

9 MR. CROPPER: And I don't want to get pushy  
10 with you, but I think she can pull a permit and put it  
11 back here because it's out of the buffer, I think she  
12 can get a permit to put it back here and then they have  
13 to get a permit to cross and get back there.

14 MS. HENRY: Keep in mind though, you'd have  
15 to get a variance to clear the buffer to get through  
16 there.

17 MR. CROPPER: Well, I think almost it would  
18 be a taking not to give it to me if I build a 26 by 40  
19 foot garage. If I could really limit the setbacks which  
20 I can on uplands outside the buffer I think I could do  
21 it and then I think --

1 MS. GISMONDI: I'm trying to put it this way.

2 MR. CROPPER: You and I have had the  
3 discussion -- let me say it like this, look at the  
4 picture where the dog -- I think the pictures you want  
5 went by, they're over here in the exhibit pile. If you  
6 look at these pictures and, Beth, look at this, I think  
7 you can say about everything that you could make it  
8 smaller and pull it in, but look at where the dog pen  
9 is. If you bring it in closer than that dog pen she's  
10 never going to be able to drive up there. It's just --  
11 the scale of it.

12 MS. VENABLE: And you've got to be able to  
13 get behind the house because of the different tanks and  
14 the gas and everything.

15 MS. GISMONDI: You have to have a separation.

16 MR. CROPPER: The law requires it. I don't  
17 know what you've got now, but it's not a heck of a lot  
18 more, if that's 26, that's not a heck of a lot more than  
19 ten now.

20 MS. GISMONDI: You couldn't pull it forward  
21 to the edge of the --



1 MS. VENABLE: No. I am using the current  
2 driveway to get in without -- adding as little to it as  
3 possible.

4 MS. GISMONDI: Put the garage in the driveway  
5 because you won't need that space anymore if you've got  
6 your other two cars.

7 MS. VENABLE: You've still got to be able to  
8 turn around and get out.

9 MR. CROPPER: Yeah, if you move it up.

10 MS. VENABLE: There's not enough room between  
11 here and the house for the existing garage.

12 MS. GISMONDI: You could still move it here  
13 and have separation, just move it up.

14 MR. CROPPER: If you go out there and look at  
15 it, you can't.

16 MS. GISMONDI: I was just out there last  
17 night.

18 MR. CROPPER: If you walk out there and look  
19 and drive your car back there and this is the best place  
20 for it. Denise doesn't have any, and I'm sorry, I keep  
21 calling her Denise. Mrs. Venable -- this isn't like a

1 variance where somebody's trying to get closer to the  
2 bay to get a bay view, she's trying to put it in the  
3 best spot and it's --

4 CHAIRMAN CLAUSS: It's so many square feet,  
5 it's going to be so many square feet is what you're  
6 saying. It's still going to be there, so where you put  
7 it almost becomes moot, we're going to approve it or not  
8 going to approve it.

9 MS. GISMONDI: Due diligence, how far can you  
10 move it, that's what I'm asking.

11 MR. CROPPER: Again, to me, this isn't like  
12 at the bayfront where you're 50 feet into the buffer or  
13 40 feet into the buffer, once you're in the buffer,  
14 you're in the buffer.

15 MS. GISMONDI: But if we don't ask the  
16 questions and put it in the record --

17 MR. CROPPER: I understand.

18 MS. VENABLE: Well, this is the second site  
19 plan or the third site plan actually that's been done  
20 that we started off with, we moved it this way and  
21 angled it this way.

1           MR. CROPPER: Frankly, I like it back off the  
2 road as much as you can.

3           MR. FEHRER: I have something to add, just  
4 for the Board's sake. Sometimes this blue line streams,  
5 this is a good example, shown as a ditch now, that  
6 probably at the start of it it was a free flowing stream  
7 at one time although it's been ditched so that's why  
8 it's shown as such. So these are all collectors for  
9 rainwater or whatever so you can't just ignore the fact.  
10 And not that it's relevant particularly in this case,  
11 but just for informational, this was probably a split  
12 free flowing stream so it's not -- it's a ditch and it's  
13 been extremely dry, that's why -- it is, it's bone dry.  
14 I've walked up and down that ditch a couple of weeks  
15 ago, well, prior to the postponement, it was dry then,  
16 it's likely to be dry until they get any big rain event.  
17 I personally have no problem with this exception as  
18 asked for, but just for the Board's sake these blue line  
19 streams are exceptions for a reason, you just can't  
20 ignore that fact.

21           MS. GISMONDI: Yeah, I was out there today,

1 if you go by the Colvert plant there's water standing so  
2 obviously everything is flowing downhill.

3 MR. FEHRER: Oh, I guess that's what I'm  
4 saying --

5 MS. GISMONDI: It's not spring rain.

6 MR. FEHRER: It's a ditch now, but  
7 historically I'd be willing to bet that that was the  
8 natural stream that was ditched. That's why I just say  
9 even though it's shown as a ditch the Board has to take  
10 these things into consideration I feel.

11 MR. CROPPER: And Beth, if Mr. Bunting has a  
12 storm water management plan he's going to pull the storm  
13 water back out of the buffer and based on your 1,700  
14 square feet of garage you're going to get 5,000 square  
15 feet of plantings so you're going to get 25 mature trees  
16 in the -- or whatever in the buffer. You're going to  
17 get a storm water management plan around the buffer and  
18 you're going to get 25 mature trees or more shrubs in  
19 the buffer.

20 MR. McCABE: I spoke with Mr. Bunting and he  
21 said that he would pull the storm water management plan

1 to pull all of the drainage forward instead of into the  
2 buffer.

3 MR. CROPPER: That's correct.

4 MR. FEHRER: Mr. McCabe, the mitigation would  
5 be native tree and shrub species?

6 MR. McCABE: Yes, they would have to plant to  
7 satisfy the three to one and it's a total of about  
8 4,155 square feet, divide that by 200 and that's how  
9 many trees you have, large trees, 1 and a half calipers  
10 6 feet.

11 MR. ROWE: Do you give credit for the dog  
12 pen?

13 MR. McCABE: Yeah, the dog pen -- the dog pen  
14 is existing so the square footage would -- they would  
15 get a reduction for the existing impervious surface,  
16 that's been calculated out of this calculation.

17 MS. GISMONDI: That's a good question, the  
18 dog pen is to be removed, I would say you still have a  
19 dog.

20 MS. VENABLE: She just doesn't stay out there  
21 anymore.

1 MS. GISMONDI: Is she in the house or is she  
2 going to stay in the new garage?

3 MS. VENABLE: No, she stays in the house now.

4 MR. CROPPER: A house dog.

5 MS. GISMONDI: I just don't want the dog pen  
6 to be up against the side here.

7 MS. VENABLE: Well, she's nine now, we had  
8 two of them back when it was originally built.

9 CHAIRMAN CLAUSS: Is there anyone in the  
10 audience for or against this application that would like  
11 to speak?

12 MR. ROWE: Can I say just one word?

13 CHAIRMAN CLAUSS: Do you want to be sworn in?

14 MR. ROWE: Yeah, I just want to say one  
15 thing.

16 Do you want me to be sworn in?

17 (Whereupon, one gentleman was duly sworn.)

18 MR. ROWE: Spencer Rowe. I just want to  
19 mention that just for the record that Chris and I were  
20 with Marshall Johnson and some other critical area  
21 people one day ten or 15 minutes from this property and

1 we said, would you like to go look at this because we're  
2 only ten minutes away, maybe you should put some eyes on  
3 the grounds and what we're really dealing with and they  
4 said no, we don't have a problem with it, we don't have  
5 time today, this is about 11:00 in the morning. So we  
6 said okay and then we got a letter from the State that  
7 you have there, opposing it, and I just wanted to put  
8 that in the record, thanks.

9 CHAIRMAN CLAUSS: Anything else from the  
10 Board?

11 (No response.)

12 CHAIRMAN CLAUSS: Mr. Cropper?

13 MR. CROPPER: No, sir.

14 CHAIRMAN CLAUSS: Chair's open for a motion.

15 MR. TAYLOR: I make a motion that we approve  
16 Case No. 107327 as applied for by the Applicant.

17 MR. FEHRER: I second that.

18 CHAIRMAN CLAUSS: All in favor signify by  
19 saying Aye.

20 MR. McCABE: Is there going to be any  
21 stipulation as applied is going to include the storm

1 water management plan or do you want to --

2 MR. FEHRER: We had an agreement by the  
3 attorney.

4 MS. GISMONDI: Let's make it part of the  
5 motion.

6 MR. TAYLOR: That's fine.

7 MR. FEHRER: Thank you.

8 MS. GISMONDI: Restate your motion.

9 CHAIRMAN CLAUSS: Do you want to include into  
10 the record the State comments and the findings of fact?

11 MR. FEHRER: Yes. Mr. Taylor?

12 MR. TAYLOR: Okay. I make a motion to  
13 approve Case No. 107327 with the addition of the storm  
14 water management agreement and I'm a little confused on  
15 the last request.

16 MR. CROPPER: I believe we just want to  
17 incorporate the staff comments.

18 MR. TAYLOR: Staff comments is included on  
19 that.

20 MS. HENRY: And if you could put in your  
21 motion that it's not only a condition, but it's a



1 condition because it was proffered by the Applicant.  
2 And I only say that because we've had a rezoning -- a  
3 planning commission issue where the planning commission  
4 had certain authority and something was proffered due to  
5 the negotiations back between the Applicant and the  
6 Board and it really wasn't a condition, it was more of a  
7 proffer and they basically proffered about the storm  
8 water management coming towards Collins Road. I would  
9 like you to incorporate it as a condition, but note that  
10 it's a proffer of the Applicant.

11 MR. CROPPER: Okay. In this case we have got  
12 a court reporter and I'll tell her that we agree to it  
13 and Denise agrees to it, right?

14 MS. VENABLE: Yes, I do.

15 MR. CROPPER: There you go.

16 CHAIRMAN CLAUSS: Second?

17 MR. FEHRER: Second.

18 CHAIRMAN CLAUSS: All in favor signify by  
19 saying Aye.

20 THE BOARD: Aye.

21 CHAIRMAN CLAUSS: Opposed no?

(No response.)

(Whereupon, the proceedings were concluded.)

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## 1 COURT REPORTER'S CERTIFICATE

2  
3 I, Melinda J. Cody, Official Court Reporter for  
4 Worcester County, Maryland, certify that I recorded  
5 verbatim by stenotype the proceedings in the  
6 above-entitled cause before the Worcester County Board  
7 of Zoning Appeals, Worcester County, Maryland, on the  
8 11th day of October, 2007.

9 I further certify that to the best of my  
10 knowledge and belief, the foregoing transcript  
11 constitutes a true and correct transcript of the said  
12 proceedings.

13 Given under my hand this 1<sup>st</sup> day of  
14 February, 2008, at Snow Hill, Maryland.

15  
16  
17 Melinda J. Cody  
18 Melinda J. Cody  
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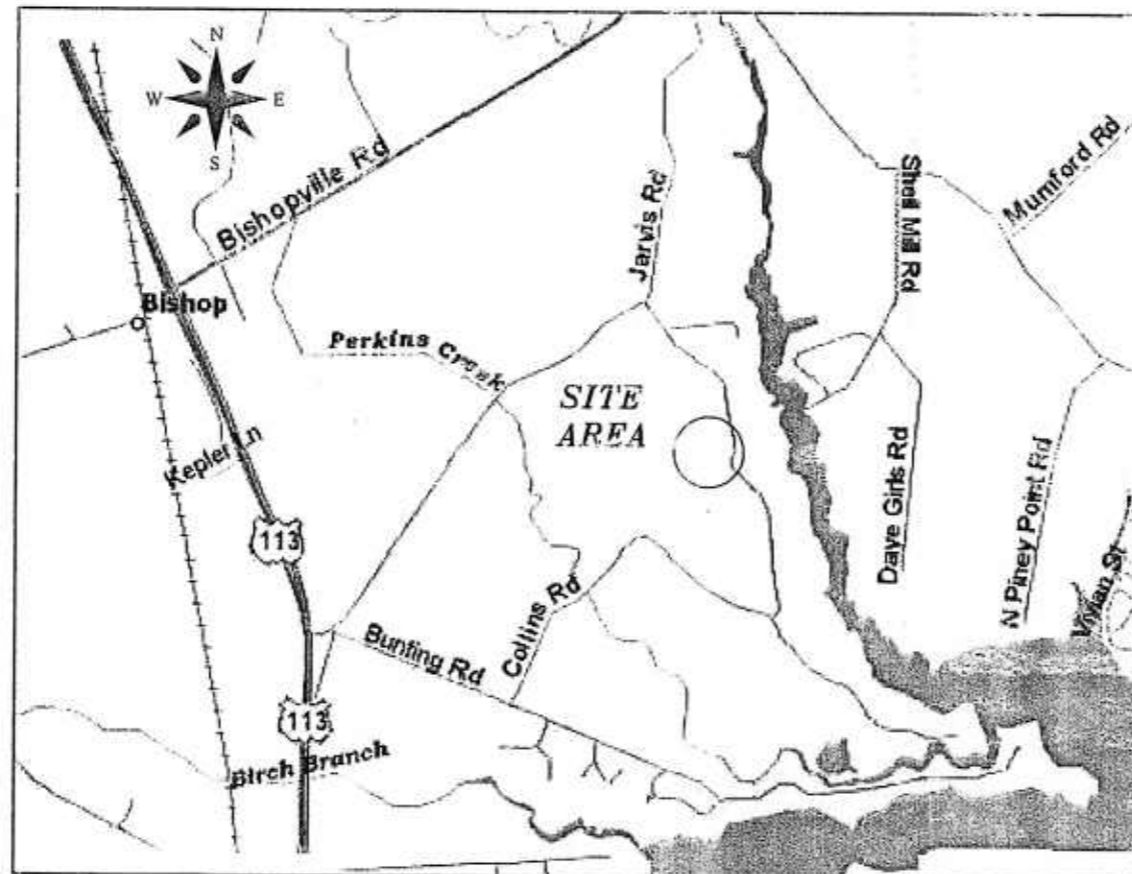
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CRITICAL AREA COMMISSION



VICINITY MAP

SHOWN AS BLUE LINE STREAM ON ATLANTIC COASTAL BAYS CRITICAL AREA MAP # 9

AREA OF PARCEL #328 = 110,633 SQ. FT. (2.54 ACRES)

N / F  
CHRIS D. & DEBORA A. FARLOW  
RHO 1626/245  
PARCEL # 318  
TAX MAP # 9  
EXISTING DWELLING

N / F  
ERIK R. & COLLEEN WINDROW  
SVH 4686/122  
LOT # 4  
PARCEL # 72  
TAX MAP # 9  
VACANT

OWNER:  
DENISE RAE FARLOW  
# 12507 COLLINS ROAD  
BISHOPVILLE, MD 21813

DEED REFERENCE:  
SVH 3974/62  
WOL 1100/287  
PARCEL # 328  
TAX MAP # 9

CURRENT ZONING: E-1  
APPLICABLE ZONING: A-1  
MIN. FRONT YARD 60' FROM CL ROAD  
MIN. REAR YARD 10'  
MIN. SIDE YARD 20'

NOTES:  
THIS PROPERTY IS SITUATED WITHIN FLOOD HAZARD ZONE C AS SHOWN ON FIRM MAP # 210083-0025-A, DATED 02/15/79.  
THIS PROPERTY IS IN THE ATLANTIC COASTAL BAYS CRITICAL AREA, ZONE: RCA (RESOURCE CONSERVATION AREA).

REFERENCE PLAT:  
"PARCEL 'A' REVISED-RESUBDIVISION PLAT OF LANDS OF JAMES R. FARLOW & DENISE R. FARLOW  
BY:  
L. E. BUNTING SURVEYS, INC.  
11/21/89  
PLAT BOOK:  
RHO 124/80

SHOWN AS BLUE LINE STREAM ON ATLANTIC COASTAL BAYS CRITICAL AREA MAP # 9

**IMPERVIOUS AREA CALCULATIONS:**

EXISTING:

|                 |               |
|-----------------|---------------|
| DWELLING        | 2,360 SQ. FT. |
| PORCH           | 60 SQ. FT.    |
| DECK            | 102 SQ. FT.   |
| PAVED DRIVE     | 3269 SQ. FT.  |
| CONC. WALKS/PAD | 122 SQ. FT.   |
| STEPS           | 24 SQ. FT.    |
| DOG PEN         | 182 SQ. FT.   |
| TOTAL           | 6,119 SQ. FT. |

PROPOSED:

|                 |               |
|-----------------|---------------|
| DWELLING        | 2,360 SQ. FT. |
| PORCH           | 60 SQ. FT.    |
| DECK **         | 320 SQ. FT.   |
| GARAGE **       | 1040 SQ. FT.  |
| PAVED DRIVE **  | 3967 SQ. FT.  |
| CONC. WALKS/PAD | 122 SQ. FT.   |
| STEPS           | 24 SQ. FT.    |
| TOTAL (DIA)     | 7,893 SQ. FT. |

ADDITIONAL IMPERVIOUS AREA: 1,774 SQ. FT.

ADDITIONAL IMPERVIOUS AREA: WITHIN 100' BUFFER: 1,385 SQ. FT.

(LA) AREA OF PARCEL #328 = 110,633 SQ. FT.  
(DIA) DEVELOPED IMPERVIOUS AREA = 7,893 SQ. FT.  
(DIA/LA)x100 = 7.13%

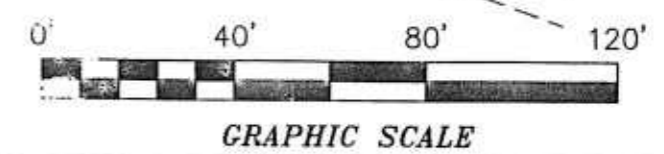
- LEGEND:
- DENOTES CONCRETE MONUMENT, FOUND
  - DENOTES IRON PIPE, FOUND
  - DENOTES LOT CORNER



*L. E. Bunting, Jr.* 8/15/07  
L. E. BUNTING, JR. DATE:

L. E. BUNTING SURVEYS, INC.  
MARYLAND & VIRGINIA  
LAND SURVEYING  
24 BROAD STREET  
BERLIN, MARYLAND 21811  
(410) 641-3313

| CURVE | RADIUS  | ARC LENGTH | CHORD LENGTH | CHORD BEARING |
|-------|---------|------------|--------------|---------------|
| C1    | 173.10' | 124.40'    | 121.74'      | S 00°53'47" E |
| C2    | 344.00' | 30.52'     | 30.51'       | S 17°09'15" W |



**SITE PLAN**  
FOR  
**DALE & DENISE VENABLE**  
**PARCEL #328, TAX MAP #9**  
FIFTH TAX DISTRICT  
WORCESTER COUNTY, MARYLAND  
SCALE: 1" = 40'  
JOB NO.: 1966SP3/07  
DATE: 06/12/07  
REV. 08/15/07

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